



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG-2021-0146]

RIN 1625-AA08

Special Local Regulation; Delaware Bay, Lower Township, NJ

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a special local regulation for certain navigable waters of the Delaware Bay. This action is necessary to provide safety of life on these navigable waters near Lower Township, NJ, during a swimming competition on August 29, 2021. This regulation prohibits persons and vessels from entering, transiting, or remaining within the regulated area unless authorized by the Captain of the Port Delaware Bay or a designated representative.

DATES: This rule is effective from 6:30 a.m. through 9:30 a.m. on August 29, 2021.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2021-0146 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Petty Officer Jennifer Padilla, U.S. Coast Guard, Sector Delaware Bay, Waterways Management Division; telephone 215-271-4814, e-mail Jennifer.l.Padilla@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
COTP	Captain of the Port
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable and contrary to the public interest to do so. Notice to the Coast Guard did not provide sufficient time to allow for a reasonable comment period prior to the event. The rule must be in force by August 29, 2021. We are taking immediate action to ensure the safety of spectators and the general public from hazards associated with a large number of persons participating in a swimming competition.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable because immediate action is needed to respond to the potential safety hazards associated with this event.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70041. The Captain of the Port Delaware Bay (COTP) has determined that potential hazards associated with the swimming competition will be a safety concern due to vessel traffic operating in proximity to a large number of swimmers. This rule is needed to protect

personnel, vessels, and the public within the regulated area during the swimming competition.

IV. Discussion of the Rule

This rule establishes a special local regulation on all navigable waters of the Delaware Bay in Lower Township, NJ, bounded by a line drawn from: latitude 39°0'57" N, longitude 074°56'56" W in Villas, NJ, thence west to latitude 39°00'59"N, longitude 074°57'15"W, thence south to latitude 38°58'08"N, longitude 074°58'11"W, thence east to latitude 38°58'04" N, longitude 074°57'54" W in North Cape May, NJ, thence north along the shoreline to the point of origin. The rule will be enforced from 6:30 a.m. to 9:30 a.m. on August 29, 2021. No person or vessel will be permitted to enter, transit through, anchor in, or remain within the regulated area without obtaining permission from the COTP Delaware Bay or a designated representative. If authorization to enter, transit through, anchor in, or remain within the regulated area is granted by the COTP Delaware Bay or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the COTP Delaware Bay or a designated representative. The Coast Guard will provide public notice of the regulated area by Broadcast Notice to Mariners and by on-scene actual notice from designated representatives.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This rule has not been designated a "significant

regulatory action,” under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on size, time of day, and duration of the regulated area, which would impact a small designated area of the Delaware Bay for three and one half hours. The regulated area does not include any marinas, piers, or other areas used to launch vessels. The Coast Guard will issue a Broadcast Notice to Mariners via VHF-FM marine channel 16 about the status of the regulated area. This regulatory action determination is based on the following considerations: (1) vessel traffic will be able to safely transit around this safety zone which would impact a small designated area of a Lower Township, NJ, for three and a half hours during the event; (2) persons and vessels will still be able to enter, transit through, anchor in, or remain within the regulated area if authorized by the COTP Delaware Bay or a designated representative; and (3) the Coast Guard will provide advance notification of the safety zone to the local maritime community by Broadcast Notice to Mariners, or by on-scene actual notice from designated representatives.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the regulated area may be small entities, for the reasons stated in section V above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the FOR FURTHER INFORMATION CONTACT section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the

Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023-01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a special local regulation that will prohibit persons and vessels from entering, transiting through, anchoring in, or remaining within a limited area on the navigable water on a portion of the Delaware Bay in Lower Township, NJ, during a swimming competition lasting approximately three and one half hours. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the ADDRESSES section of this preamble.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are

asked to call or email the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 100

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

1. The authority citation for part 100 continues to read as follows:

Authority: 46 U.S.C. 70041; 33 CFR 1.05-1.

2. Add § 100.T05-0146 to read as follows:

§ 100.T05-0146; Special Local Regulation; Delaware Bay, Lower Township, NJ.

(a) *Location.* The following location is a regulated area. All navigable waters of the Delaware Bay in Lower Township, NJ, bounded by a line drawn from: latitude 39°0'57" N, longitude 074°56'56" W in Villas, NJ, thence west to latitude 39°00'59"N, longitude 074°57'15"W, thence south to latitude 38°58'08"N, longitude 074°58'11"W, thence east to latitude 38°58'04" N, longitude 074°57'54" W in North Cape May, NJ, thence north along the shoreline to the point of origin.

(b) *Definitions.* As used in this section, *designated representative* means a Coast Guard Patrol Commander, including a Coast Guard petty officer, warrant or commissioned officer on board a Coast Guard vessel or on board a federal, state, or local law enforcement vessel assisting the Captain of the Port (COTP), Delaware Bay in the enforcement of the regulated area.

(c) *Regulations.* (1) The COTP Delaware Bay or a designated representative may forbid and control movement of all vessels and persons, including event participants,

in the regulated area. When hailed or signaled by an official patrol, a vessel or person in the regulated area shall immediately comply with the directions given by the patrol. Failure to do so may result in the Coast Guard expelling the person or vessel from the area, issuing a citation for failure to comply, or both. The COTP Delaware Bay or a designated representative may terminate the event, or a participant's operations at any time the COTP Delaware Bay or designated representative believes it necessary to do so for the protection of life or property.

(2) To seek permission to enter or remain in the regulated area, contact the COTP or the COTP's representative via VHF-FM channel 16 or 215-271-4807. Those in the regulated area must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(3) This section applies to all vessels except those engaged in law enforcement, aids to navigation servicing, and emergency response operations.

(d) Enforcement. The U.S. Coast Guard may be assisted in the patrol and enforcement of the regulated area by Federal, State, and local agencies.

(e) Enforcement period. This zone will be enforced from 6:30 a.m. through 9:30 a.m. on August 29, 2021.

Dated: August 3, 2021.

Jonathan D. Theel,
Captain, U.S. Coast Guard
Captain of the Port Delaware Bay

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